

DIAMOND MCCARTHY LLP

Andrew B. Ryan, Esq. (*pro hac vice*)
James D. Sheppard, Esq. (*pro hac vice*)
1201 Elm Street, Suite 3400
Dallas, TX 75209
Telephone: 214-389-5300
Facsimile: 214-389-5399
aryan@diamondmccarthy.com
jsheppard@diamondmccarthy.com

*Counsel for Allan B. Diamond,
Chapter 11 Trustee for Howrey LLP*

KORNFELD, NYBERG, BENDES & KUHNER, P.C.

Eric A. Nyberg, Esq. (Bar No. 131105)
Chris D. Kuhner, Esq. (Bar No. 173291)
1970 Broadway, Suite 225
Oakland, CA 94612
Telephone: 510-763-1000
Facsimile: 510-273-8669
e.nyberg@kornfieldlaw.com
c.kuhner@kornfieldlaw.com

*Local Counsel for Allan B. Diamond,
Chapter 11 Trustee for Howrey LLP*

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re)	Case No. 11-31376 DM
)	Chapter 11
HOWREY LLP,)	Hon. Dennis Montali
)	
Debtor.)	CHAPTER 11 TRUSTEE'S MOTION
)	FOR ENTRY OF ORDER APPROVING
)	SETTLEMENT AGREEMENT WITH
)	CROWELL & MORING LLP
)	
)	

1 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE:

2 Allan B. Diamond, the chapter 11 trustee ("Trustee") for Howrey LLP ("Howrey" or
3 "Debtor"), hereby submits this motion ("Motion") pursuant to Federal Rule of Bankruptcy
4 Procedure 9019(a) for entry of an order approving an unfinished business settlement between the
5 Debtor and Crowell & Moring LLP ("C&M"). This settlement (if approved) will resolve any
6 and all claims between the Trustee and C&M without the need for litigation, provides a cash
7 payment to the estate, and is well within the Trustee's business judgment. In support of this
8 Motion, the Trustee represents as follows:

9 **JURISDICTION**

10 1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(a) and (b). This is a
11 core proceeding pursuant to 28 U.S.C. § 157(b) (2).

12 **BACKGROUND**

13 ***Howrey Bankruptcy and Claims Investigation.***

14 2. On April 11, 2011, certain creditors of Howrey filed a chapter 7 involuntary
15 petition against the Debtor. On June 6, 2011, the Court entered an order converting the above
16 captioned case to a case under chapter 11 of the Bankruptcy Code.

17 3. On September 22, 2011, the Court entered an order granting a motion to appoint a
18 chapter 11 trustee. On October 7, 2011, the U.S. Trustee for the Northern District of California
19 appointed the Trustee as chapter 11 trustee for the estate of Howrey. On October 12, 2011, the
20 Court entered an order approving the appointment of the Trustee.

21 4. Since his appointment, the Trustee and his counsel have analyzed potential claims
22 to recover valuable assets of Howrey's estate. The Trustee has identified claims against certain
23 former Howrey partners and their successor law firms relating to "unfinished business" of
24

1 Howrey and also known as *Jewel v. Boxer* claims. In Adversary Complaints filed in this Court,
2 the Trustee has alleged that Howrey's former partners attempted to shield themselves and their
3 successor law firms from unfinished business claims by executing a so-called Jewel Waiver on
4 the eve of Howrey's dissolution. In alleging that the Jewel Waiver provided no benefit to
5 Howrey (or its creditors), the Trustee is seeking to avoid the Jewel Waiver as a fraudulent
6 transfer under applicable bankruptcy and state laws and to require the successor law firms to
7 return the profits received from Howrey's unfinished business.

8 5. On July 18, 2012, this Court entered an Order authorizing the Trustee to issue a
9 Rule 2004 subpoena to certain successor law firms (including C&M) that included a document
10 request seeking, among other things, discovery related to the transfer of Howrey clients and
11 client matters to the successor law firms and the compensation paid to the former Howrey
12 partners. *See* Case No. 11-31376, Docket No. 754. In seeking the Rule 2004 subpoenas, the
13 Trustee explained to this Court that "[b]y obtaining the information [regarding the former
14 Howrey matters], the Trustee hopes to be able to initiate discussions with the Firms for the
15 purpose of reaching resolution with respect to any potential claims regarding the Firms' receipt
16 of fees from Howrey's former clients, and/or to initiate any appropriate legal proceedings. *See*
17 *id.* Docket No. 753.

18 6. Before filing adversary complaints to avoid the Jewel Waiver and recover the
19 unfinished business profits, the Trustee and certain successor law firms have engaged in
20 negotiations to achieve a pre-suit resolution that would avoid the time and expense of litigation.

21 7. After discovery and analysis of these claims discussed below, the Trustee and
22 C&M have reached a compromise outlined in the Settlement Agreement (the "C&M Settlement
23 Agreement"), a copy of which is attached as **Exhibit A**. As discussed below and in his
24
25

1 Declaration attached as **Exhibit B**, the Trustee has determined in the exercise of his reasonable
2 business judgment that the proposed C&M Settlement Agreement is fair and reasonable within
3 the standards discussed above, and that it is in the best interests of the Howrey estate. See
4 Diamond Decl. ¶¶ 8-13.

5 ***Negotiations With C&M and the Proposed Settlement***

6 8. On February 15, 2013, the Trustee served C&M with a Rule 2004 subpoena for
7 information regarding unfinished business claims (the “Unfinished Business Subpoena”),
8 relating to legal matters that originated at Howrey and were transferred to C&M in connection
9 with the departure of a former Howrey partner (the “Unfinished Business Claims”).

10 9. On or about December 15, 2013, C&M responded to the Unfinished Business
11 Subpoena by providing certain information and calculations on matters transferred from Howrey
12 to C&M (the “C&M Data”) by former Howrey partner Mark Klapow (“C&M Former Howrey
13 Partner”).

14 10. Since February 2013, and continuing through January 2014, the Trustee has
15 discussed and analyzed the factual circumstances and legal issues relating to the C&M Data.

16 11. Between January 14, 2014 and January 16, 2014, the Trustee and C&M engaged
17 in arm’s length negotiations regarding the settlement of Unfinished Business Claims that Howrey
18 may have against C&M.

19 12. On February 6, 2014, the Parties reached the compromise that is the subject of
20 this Motion. For the reasons discussed below, the Trustee submits that the proposed settlement
21 is well within the range of reasonableness and in the best interests of the estate. By this Motion,
22 the Trustee, therefore, requests that the Court approve the C&M Settlement Agreement and grant
23
24
25

1 the other requested relief so the estate and its creditors may obtain the benefits of this
2 compromise.

3 **TERMS OF PROPOSED SETTLEMENT AGREEMENT**

4 13. Following extensive arm's-length negotiations, the Trustee and C&M have
5 reached a proposed resolution of the Trustee's Unfinished Business Claims against C&M. The
6 material terms of the C&M Settlement Agreement are as follows:

- 7 a. **Payment**: Within three business days of the Effective Date, C&M shall pay the
8 sum of \$65,500 to the Trustee (the "**Payment**") via check or wire transfer. *See*
C&M Settlement Agreement ¶¶ 1-2, 14.
- 9 b. **Release by Trustee**: Upon the Effective Date of the C&M Settlement
10 Agreement and receipt by Trustee of the Payment, the Trustee will agree to (i)
11 release any and all claims against C&M; and (ii) release any "unfinished
business" claims against the C&M Former Howrey Partner. *See* C&M
Settlement Agreement ¶¶ 1, 4.
- 12 c. **Release by C&M**: Upon the Effective Date of the C&M Settlement Agreement,
13 C&M will agree to release claims against Howrey and/or the Trustee (and their
14 related parties) that C&M has ever had, now has, or shall have against Howrey
and/or the Trustee. *See* C&M Settlement Agreement ¶ 5.

15 **BASIS FOR RELIEF AND APPLICABLE AUTHORITY**

16 14. By this Motion, the Trustee respectfully seeks the entry of an order pursuant to
17 section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a) approving the C&M
18 Settlement Agreement. As discussed in further detail below, the C&M Settlement Agreement
19 provides a fair and equitable resolution of the Parties' disputes and is in the best interests of the
Howrey estate.

20 15. Bankruptcy Rule 9019(a) provides, in part, that "[o]n motion by the trustee and
21 after notice and a hearing, the court may approve a compromise or settlement." FED. R. BANKR.
22 P. 9019(a). The Rule empowers bankruptcy courts to approve compromises and settlements that
23 are "fair and equitable" and "in the best interest of the estate." *Martin v. Kane (In re A & C*
24

1 *Properties*), 784 F.2d 1377, 1381 (9th Cir. 1986), *cert. denied sub nom. Martin v. Robinson*, 479
2 U.S. 854 (1986). “The bankruptcy court has ‘great latitude’ in approving compromise
3 agreements.” *Woodson v. Fireman’s Insurance, Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir.
4 1988).

5 16. To evaluate a compromise, a bankruptcy court considers “(a) [t]he probability of
6 success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection;
7 (c) the complexity of the litigation involved, and the expense, inconvenience and delay
8 necessarily attending it; [and] (d) the paramount interest of the creditors and a proper deference
9 to their reasonable views in the premises.” *In re A & C Properties*, 784 F.3d at 1381.

10 17. In addition to the four prong test set forth in *A & C Properties*, it is also well
11 established that “the law favors compromise and not litigation for its own sake.” *See Port*
12 *O’Call Investment Co. v. Blair (In re Blair)*, 538 F.2d 849, 851 (9th Cir. 1976).

13 18. Although the Trustee, as the proponent of the settlement, bears the burden of
14 persuasion (*see id.*), “a court generally gives deference to a trustee’s business judgment in
15 deciding whether to settle a matter,” *In re Mickey Thompson, Entertainment Group, Inc.*, 292
16 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

17 19. As discussed below and in his Declaration, the Trustee has determined in the
18 exercise of his reasonable business judgment that the proposed C&M Settlement Agreement is
19 fair and reasonable within the standards discussed above, and that it is in the best interests of the
20 Howrey estate. *See* Diamond Decl. ¶¶ 8-13.

21 20. Here, there is no question that the C&M Settlement Agreement and Payment are
22 in the best interests of the estate. First, the Payment is approximately 17% of the gross revenue
23 collected by C&M on the former Howrey matters and, thus, well within the range of
24

1 reasonableness based on the range of settlements obtained in prior law firm bankruptcies. *See*
2 Diamond Decl. ¶ 10.

3 21. Second, the C&M Settlement Agreement was achieved without the cost, delay,
4 and uncertainty of litigation that would likely include, among other things, a motion to dismiss, a
5 motion for summary judgment, a trial in this Court, and potential appeals. C&M raised a legal
6 defense about whether the firm had unfinished business liability because the C&M Former
7 Howrey Partner was a Level I partner at Howrey. Although the Trustee believes that this issue
8 would be resolved in the Trustee's favor, the C&M Settlement Agreement obviates the risk that
9 the Trustee faces in litigating this issue. *See* Diamond Decl. ¶ 11.

10 22. Had the Trustee filed a lawsuit against C&M to recover the unfinished business
11 profits, the Trustee would initially need to prevail against any motion to dismiss filed by C&M.
12 At the time of the C&M Settlement Agreement, the successor law firms' motions to dismiss were
13 still pending in this Court and, to some degree, there was still litigation risk. But still, the
14 Trustee has good reason to believe that any dismissal motion filed by C&M would be denied.

15 23. The proposed C&M Settlement Agreement eliminates the time, expense, and
16 uncertainty of litigating the claims and defenses in a motion to dismiss, as well as the risk of a
17 negative result after trial. To date, the Trustee has incurred relatively low litigation costs in
18 evaluating and pursuing these claims against C&M, however, that figure will undoubtedly
19 increase dramatically as other successor law firms pursue motions to dismiss. *See* Diamond
20 Decl. ¶ 12.

21 24. Given the time, expense, and uncertainty associated with litigation to recover
22 from C&M, the Trustee believes that the Payment is within the range of reasonableness and will
23 provide a substantial monetary benefit to the estate. *See* Diamond Decl. ¶¶ 8-13.

25. In summary, because the proposed settlements satisfy all of the *A & C Properties* factors, the Trustee has concluded in his business judgment that the C&M Settlement Agreement is fair, equitable, and in the best interest of the estate, and should be approved by the Court. *See* Diamond Decl. ¶ 13.

CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court grant the Motion and enter and order approving the Debtor's compromise with C&M as described above.

Dated: March 25, 2014

/s/ James Sheppard
Andrew B. Ryan, Esq. (*pro hac vice*)
James D. Sheppard, Esq. (*pro hac vice*)
DIAMOND MCCARTHY LLP
1201 Elm Street, Suite 3400
Dallas, TX 75209
Telephone: 214-389-5300
Facsimile: 214-389-5399
aryan@diamondmccarthy.com
awelch@diamondmccarthy.com

Eric A. Nyberg, Esq. (Bar No. 131105)
Chris D. Kuhner, Esq. (Bar No. 173291)
KORNFIELD, NYBERG, BENDES & KUHNER, P.C.
1970 Broadway, Suite 225
Oakland, CA 94612
Telephone: 510-763-1000
Facsimile: 510-273-8669

*Counsel for Allan B. Diamond,
Chapter 11 Trustee for Howrey LLP*

1 **NOTICE OF SERVICE**

2 X (CM/ECF) The document was electronically served on the parties to this action via the
3 mandatory United States Bankruptcy Court of California CM/ECF system upon filing of above
described document:

4 **SEE ATTACHED SERVICE LIST**

5 X (ELECTRONIC MAIL SERVICE) By electronic mail (e-mail) the above listed
6 document(s) without error to the email address(es) set forth below on this date:

7 **SEE ATTACHED SERVICE LIST**

8 X (UNITED STATES MAIL) By depositing a copy of the above-referenced documents for
mailing in the United States Mail, first class postage prepaid, at Houston, Texas, to the parties
9 listed, at their last known mailing addresses, on this date:

10 **SEE ATTACHED SERVICE LIST**

11 (OVERNIGHT COURIER) By depositing a true and correct copy of the above
referenced document for overnight delivery via Federal Express, at a collection facility
12 maintained for such purpose, addressed to the parties on the attached service list, at their last
known delivery address, on the date above written.

13 (COURIER SERVICE) By providing true and correct copies of the above referenced
documents [with copies of the supporting detailed invoices/attorney time records for the Final
14 Fee Application] via courier delivery, to the following on or about _____:

15 (FACSIMILE) That I served a true and correct copy of the above-referenced document via
16 facsimile, to the facsimile numbers indicated, to those people listed on the attached service list,
on the date above written.

17
18 /s/ Andrew B. Ryan
19 Andrew B. Ryan
20
21
22
23
24
25

VIA CM/ECF:

United States Trustee

Minnie Loo, Esq.
Donna S. Tamanaha, Esq.
Office of the U.S. Trustee
235 Pine Street, 7th Floor
San Francisco, CA 94104-3484
Email: Minnie.Loo@usdoj.gov
Email: Donna.S.Tamanaha@usdoj.gov

Chapter 11 Trustee

Allan B. Diamond
Diamond McCarthy, LLP
Two Houston Center
909 Fannin Street, Suite 1500
Houston, Texas 77010
Email: adiamond@diamondmccarthy.com

Counsel for the Chapter 11 Trustee

Diamond McCarthy, LLP
Howard D. Ressler, Esq.
Email: hressler@diamondmccarthy.com
Stephen T. Loden, Esq.
Email: sloden@diamondmccarthy.com
Jason M. Rudd, Esq.
Email: jrudd@diamondmccarthy.com

Kornfield Nyberg Bender & Kuhner P.C.
Eric Nyberg
Email: e.nyberg@kornfieldlaw.com
Chris D. Kuhner
Email: c.kuhner@kornfieldlaw.com

Debtor's Counsel

Wiley Rein LLP
H. Jason Gold
Valerie P. Morison
Dylan G. Trache
Email: jgold@wileyrein.com
Email: vmorrison@wileyrein.com
Email: dtrache@wileyrein.com

Murray & Murray
Robert A. Franklin
Craig M. Prim
Jenny Lynn Fountain
Email: rfranklin@murraylaw.com
Email: cprim@murraylaw.com
Email: jfountain@murraylaw.com

Duane Morris LLP

Geoffrey A. Heaton, Esq.
Email: gheaton@duanemorris.com
Aron M. Oiner, Esq.
Email: roliner@duanemorris.com

1 **Law Offices of Latham & Watkins**

Kimberly A. Posin, Esq.
Email: kim.posin@lw.com

2
3 **Murray & Murray**

Craig M. Prim, Esq.
Email: cprim@murraylaw.com
Robert A. Franklin, Esq.
Email: rfranklin@murraylaw.com
Jenny L. Fountain, Esq.
Email: jlfountain@murraylaw.com

4
5
6 **Official Committee of Unsecured Creditors**

Whiteford, Taylor & Preston LLP
Bradford F. Englander, Esq.
Email: benglander@wtplaw.com
John F. Carlton, Esq.
Email: jcarlton@wtplaw.com
Justin P. Fasano, Esq.
Email: jfasano@wtplaw.com

7
8
9
10 **Counsel for The Irvine Company, LLC**

Allen Matkins, et al.
Email: mgreger@allenmatkins.com

11 **Counsel for Creditor Citibank, N.A.**

Paul, Weiss, Rifkind, Wharton & Garrison
Kelley A. Cornish, Esq.
Email: kcornish@paulweiss.com

12
13
14
15 **Counsel for Creditor Protiviti, Inc.**

McNutt Law Group, LLP
Scott H. McNutt, Esq.
Email: smcnutt@ml-sf.com

16
17 **Counsel for Creditor Oracle America, Inc.**

Pachulski, Stang, Ziehl & Jones
John D. Fiero, Esq.
Email: jfiero@pszjlw.com

18 **Counsel for Creditor U.S. Bank, N.A.,
19 as Trustee**

Buchalter Nemer
Shawn M. Christianson, Esq.
Email: schristianson@buchalter.com

20
21 **Counsel for Attorneys' Liability Assurance
22 Society, Inc., A Risk Retention Group**

Perkins Coie LLP
David J. Gold, Esq.
Email: dgold@perkinscoie.com
Gabriel Liao, Esq.
Email: gliao@perkinscoie.com

23 **Counsel for Creditors Advanced Discovery
24 LLc, Give Something Back, Inc., Jan Brown
& Associates, Kent Daniels & Associates, Inc.,**

Perkins Coie LLP
Alan D. Smith, Esq.
Email: adsmith@perkinscoie.com

Trepel McGrane Greenfield LLP
Maureen A. Harrington, Esq.
Email: mharrington@tmcglaw.com

**L.A. Best Photocopies, Inc., Western
Messenger Service, Inc.**

Christopher D. Sullivan, Esq.
Email: csullivan@tgsdlaw.com

Counsel for BP/CGCENTER I, LLC

Allen, Matkins, Leck, Gamble and Mallory
William W. Huckins
Email: whuckins@allenmatkins.com

Counsel for Creditor Warner Investment, L.P.

McKenna Long and Aldridge LLP
Gregg S. Kleiner, Esq.
Email: gkleiner@mckennalong.com

Counsel for Creditor Dewey & LeBoeuf LLP

Dewey and LeBoeuf
Paul S. Jasper, Esq.
Email: pjasper@dl.com

**Counsel for Creditor Iron Mountain
Information Management Inc.**

Bartlett, Hackett and Feinberg
Frank F. McGinn, Esq.
Email: ffm@bostonbusinesslaw.com

**Counsel for Creditor Hines REIT 321
North Clark Street, LLC**

DLA Piper LLP
Frank T. Pepler, Esq.
Email: frank.pepler@dlapiper.com

Counsel for Creditor Stephanie Langley

Outten and Golden LLP
Rene S. Roupinian, Esq.
Email: rst@outtengolden.com

Counsel for Creditor Stephanie Langley

Law Offices of James D. Wood
James D. Wood, Esq.
Email: jdw@jdwoodlaw.com

**Counsel for Creditor Pension Benefit
Guaranty Corp.**

Office of the Chief Counsel
John Holland Ginsberg, Esq.
Email: ginsberg.john@pbgc.gov

**Counsel for Interested Party Connecticut
General Life Insurance Company**

Schnader Harrison Segal and Lewis
Melissa Lor, Esq.
Email: MLor@Schnader.com

Counsel for Howrey Claims LLC

McGrane LLP
William McGrane, Esq.
Email: william.mcgrane@mcgranelLP.com

**Counsel for Interested Party Connecticut
General Life Insurance Co.**

Melissa Lor
Email: mlor@schnader.com

Counsel for Creditor Knickerbocker Properties, Inc. XXXIII

Seyfarth Shaw LLP
Scott Olson, Esq.
Email: solson@seyfarth.com

Counsel for Creditor Banc of America Leasing & Capital, LLC

Law Offices of Serlin and Whiteford
Mark A. Serlin, Esq.
Email: mserlin@globelaw.com

Counsel for Creditor Texas Comptroller of Public Accounts

Bankruptcy & Collections Division
Kimberly Walsh, Esq.
Email: bk-kwalsh@oag.state.tx.us

Counsel for Creditor 200 S. Main Street Investors, LLC

Ballard Spahr Andrews and Ingersoll
Rebecca J. Winthrop, Esq.
Email: WinthropR@ballardspahr.com
Penny M. Costa, Esq.
Email: costap@ballardspahr.com

Counsel for Creditor Citibank, N.A.

Peitzman Weg LLP
Larry Peitzman, Esq.
Email: lpeitzman@peitzmanweg.com

Counsel for Amy J. Fink

Jones Day
Robert A. Trodella
Email: rtrodella@jonesday.com

Counsel for Harris County

Linebarger Goggan Blair & Sampson LLP
John P. Dillman
Email: houston_bankruptcy@lgbs.com

Counsel for Informal Group of Certain Former Howrey Attorneys

Dumas & Clark LLP
Cecily A. Dumas
Email: Cecily.dumas@dumasclark.com
Robert E. Clark
Email: Robert.clark@dumasclark.com

Counsel for SAP America, Inc.

Cooper White & Cooper LLP
Peter C. Califano
Email: pcalifano@cwclaw.com

Counsel for SAP America, Inc.

Brown & Connery LLP
Donald K. Ludman, Esq.
Email: dludman@brownconnery.com

Counsel for McKenna Long and Aldridge

Michael A. Isaacs, Esq.
Email: misaacs@mckennalong.com
aworthing@mckennalong.com

Counsel for Jeffrey M. Judd

Judd Law Group

Jeffrey M. Judd, Esq.

Email: jeff@juddlawgroup.com
melanie@juddlawgroup.com

Counsel for McGrane LLP

William Joseph Walraven, Esq.

Email: anna.song@mcgranellp.com

Counsel for Cooper US, Inc.

Cooper Industries, Inc.

Paula Beck Whitten, Esq.

Email: paula.whitten@cooperindustries.com

Counsel for Neal Gerber & Eisenberg LLP

Hanson Bridgett LLP

Nancy J. Newman

Email: nnewman@hansonbridgett.com

VIA EMAIL:

Counsel for Creditor Citibank, N.A.

Paul, Weiss, Rifkind, Wharton & Garrison

Kelley A. Cornish, Esq.

Email: kcornish@paulweiss.com

Diane Meyers, Esq.

Email: dmeyers@paulweiss.com

Jacob J. Adlerstein, Esq.

Email: jadlerstein@paulweiss.com
ayoung@paulweiss.com

Ballard Spahr LLP

Matthew Moncur, Esq.

Email: moncurm@ballardspahr.com

EMC Corporation

c/o Receivable Management Services

Steven Sass, Esq.

Email: steven.sass@rmsna.com

Ronald Rowland, Esq.

Email: Ronald.rowland@rmsna.com

Olin Corporation

S. Christian Mullgardt

Email: scmullgardt@olin.com

Counsel for Ober Kaler LLP

John Anthony Wof, Esq.

Email: jawolf@ober.com

mhwhitman@ober.com

VIA U.S. MAIL:

Richard Burdge, Esq.
The Burdge Law Firm PC
500 S Grand Ave Ste 1500
Los Angeles, CA 90071

Jeffrey C. Wisler, Esq.
Connolly Bove Lodge & Hutz LLP
1007 North Orange Street
Wilmington, DE 19899
Attorneys for Interested Party Connecticut General Life Insurance Company

IKON Office Solutions
Recovery & Bankruptcy Group
3920 Arkwright Road, Suite 400
Macon, GA 31210

EMC Corporation
c/o RMS Bankruptcy Recovery Services
Attn: President or General/Managing Agent
P.O. Box 5126
Timonium, MD 21094-5126

Salter & Company LLC
4600 East-West Highway, Suite 300
Bethesda, MD 20814

County of Loudoun Virginia
Belkys Escobar
1 Harrison St., S.E. 5th Fl.
Leesburg, VA 20175-3102

Matura Farrington Staffing Services, Inc.
700 So. Flower Street, Suite 2505
Los Angeles, CA 90017

Guy Davis
Protiviti Inc.
1051 East Cary Street, Suite 602
Richmond, VA 23219

George E. Shoup, III
Development Specialists, inc.
6375 Riverside Drive, Suite 200
Dublin, OH 43017-5373

1 Kyle Everett
Development Specialists, Inc.
2 235 Pine Street, Suite 1150
San Francisco, CA 94104

3 James W. Martin
DHR International
4 5425 Wisconsin Ave., 4th Floor
Chevy Chase, MD 20815
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by and between Allan B. Diamond, in his capacity as the Chapter 11 Trustee (the "Trustee") for Howrey, Simon, Arnold and White LLP a/k/a Howrey LLP ("Howrey"), and Crowell & Moring LLP ("C&M") and, together with the Trustee, the "Parties"), as of the date signed below.

RECITALS

A. On April 11, 2011, certain creditors of Howrey filed an involuntary petition for relief under Chapter 7 of the United States Bankruptcy Code initializing Case No. 11-31376-DM (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court");

B. On June 6, 2011, the Bankruptcy Court entered an Order for Relief and Converting the Bankruptcy Case to one under Chapter 11;

C. On October 12, 2011, the Bankruptcy Court entered an Order Approving Appointment of Chapter 11 Trustee whereby the Bankruptcy Court approved the Trustee as the Chapter 11 Trustee in the Bankruptcy Case;

D. On February 15, 2013, the Trustee served C&M with a Rule 2004 subpoena regarding unfinished business claims by the Trustee and/or Howrey (the "Subpoena").

E. On December 5, 2013, C&M responded to the Subpoena by providing information for settlement purposes only regarding receipts paid to C&M on matters brought by Mark Klapow ("Klapow"), a former Howrey partner, to C&M (the "Matters").

F. Since February 2013, and continuing through January 2014, the Trustee has discussed and analyzed the factual circumstances and legal issues relating to the Matters.

G. Between January 14, 2014, and January 16, 2014, the Trustee and C&M engaged in arms-length negotiations regarding the settlement of unfinished business claims that the Trustee and/or Howrey has or may have against C&M.

H. In compromise of disputed matters and to avoid the expense of litigation, and without admitting the validity of any claims asserted by the Trustee, C&M has accepted the Trustee's settlement offer to resolve the unfinished business claims the Trustee and/or Howrey has or may have against C&M relating to the Matters. Accordingly, the Trustee and C&M hereby enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby acknowledge and agree as follows:

1. The Parties have agreed that C&M shall pay the Trustee the sum of \$65,500, in a one-time payment (the "Payment"), to resolve the unfinished business claims that the Trustee

and/or Howrey has or may have against C&M, and the unfinished business claims and excess distributions claims that the Trustee and/or Howrey has or may have against Klapow.

2. Within three (3) business days after the Effective Date of this Agreement, as defined in Paragraph 15 below, C&M shall transfer the Payment to the Trustee either by check or wire transfer, in the manner described below:

a. By check:

Payable to: "Allan B. Diamond, Chapter 11 Trustee of Howrey LLP"
Diamond McCarthy LLP
Attention – Jason M. Rudd
Two Houston Center
909 Fannin Street, Suite 1500
Houston, Texas 77010; or

b. By wire transfer:

Allan B. Diamond, Chapter 11 Trustee of Howrey LLP
Account No. 9250393741
Citibank, N.A.
ABA No. 254070116

3. Promptly upon execution of this Agreement, the Trustee will seek the approval of the Bankruptcy Court of this Agreement in accordance with Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). C&M agrees to reasonably cooperate, if required, in the request for approval of this Agreement from the Bankruptcy Court. This Agreement is expressly contingent upon the approval of the Bankruptcy Court.

4. Upon the Effective Date of this Agreement and receipt of the Payment, the Trustee on behalf of Howrey and its estate, for consideration as enumerated above, and with the exception of the terms of Paragraph 6 of this Agreement, hereby releases, acquits, satisfies, and forever discharges C&M, and its respective successors, predecessors, assigns, representatives, insurers, and guarantors, as well as its past and present directors, officers, members, managers, employees, subsidiaries, partners and spouses of partners (with the exception of any other former Howrey partner who may join C&M after the execution of this Agreement, to the extent provided in Paragraph 6 of this Agreement), parents, affiliates, affiliated companies, joint venture partners, subcontractors, attorneys, and agents, of and on account of all manner of action and actions, cause and causes of action, suits, debtors, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions of claims, and demands whatsoever, latent or patent, in law or in equity, known or unknown, mature or unmature, that Howrey or the Trustee has ever had, now has, or shall have against C&M.

5. Upon the Effective Date of this Agreement and after transfer of the Payment to the Trustee, C&M, for itself and on behalf of its agents, administrators, successors, and assigns, for consideration as enumerated above, hereby releases, acquits, satisfies, and forever discharges

Howrey and the Trustee, his successors, predecessors, assigns, representatives, insurers, guarantors, as well as their past and present directors, officers, members, managers, employees, subsidiaries, partners and spouses of partners, parents, affiliates, affiliated companies, joint venture partners, subcontractors, attorneys, and agents, of and on account of all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions of claims, and demands whatsoever, latent or patent, in law or in equity, known or unknown, mature or unmature, that C&M has ever had, now has, or shall have against Howrey or the Trustee.

6. NOTHING CONTAINED IN THIS AGREEMENT, NOR THE NEGOTIATION, EXECUTION, OR DELIVERY HEREOF BY ANY PARTY, SHALL BE DEEMED TO CONSTITUTE A WAIVER OR RELEASE OF ANY CLAIMS, RIGHTS OR ACTIONS THAT HOWREY, THE TRUSTEE, THE CREDITORS COMMITTEE, OR ANY OF THEIR ASSIGNS, SHALL HAVE AGAINST: (A) ANY FORMER HOWREY PARTNER; (B) ANY FORMER HOWREY PARTNER WHO MAY IN THE FUTURE BE EMPLOYED AT OR A PARTNER OF C&M AFTER THE EFFECTIVE DATE OF THIS AGREEMENT; AND (C) C&M WITH RESPECT TO UNFINISHED BUSINESS CLAIMS THAT MAY ARISE IN THE FUTURE SOLELY AS A RESULT OF C&M'S EMPLOYMENT OR ACCEPTANCE AS A PARTNER AFTER THE EFFECTIVE DATE OF THIS AGREEMENT OF A FORMER HOWREY PARTNER (OTHER THAN KLAPOW) WHO DISASSOCIATED FROM HOWREY AFTER MARCH 1, 2010. EACH OF THE TRUSTEE, HOWREY, AND C&M HEREBY EXPRESSLY AGREE THAT HOWREY, THE TRUSTEE, THE CREDITORS COMMITTEE, OR ANY OF THEIR ASSIGNS, RESERVE AND RETAIN ALL RIGHTS AND CLAIMS THAT THEY MAY HAVE IN AND TO ALL CLAIMS, CAUSES OF ACTION AND RIGHTS, WHETHER PURSUANT TO THE BANKRUPTCY CODE, FEDERAL, STATE STATUTORY LAW OR COMMON LAW, OR OTHERWISE, AGAINST: (A) ANY FORMER HOWREY PARTNER; (B) ANY FORMER HOWREY PARTNER WHO MAY IN THE FUTURE BE EMPLOYED AT OR A PARTNER OF C&M AFTER THE EFFECTIVE DATE OF THIS AGREEMENT; AND (C) C&M WITH RESPECT TO UNFINISHED BUSINESS CLAIMS THAT MAY ARISE IN THE FUTURE SOLELY AS A RESULT OF C&M'S EMPLOYMENT OR ACCEPTANCE AS A PARTNER AFTER THE EFFECTIVE DATE OF THIS AGREEMENT OF A FORMER HOWREY PARTNER (OTHER THAN KLAPOW) WHO DISASSOCIATED FROM HOWREY AFTER MARCH 1, 2010. EACH OF THE TRUSTEE, HOWREY, AND C&M HEREBY EXPRESSLY AGREE THAT C&M RESERVES AND RETAINS ALL RIGHTS AND DEFENSES IT MAY HAVE REGARDING ALL CLAIMS, CAUSES OF ACTION AND RIGHTS, WHETHER PURSUANT TO THE BANKRUPTCY CODE, FEDERAL, STATE STATUTORY LAW OR COMMON LAW, OR OTHERWISE, THAT HOWREY, THE TRUSTEE, THE CREDITORS COMMITTEE, OR ANY OF THEIR ASSIGNS MAY HAVE AGAINST C&M WITH RESPECT TO UNFINISHED BUSINESS CLAIMS THAT MAY ARISE IN THE FUTURE SOLELY AS A RESULT OF C&M'S EMPLOYMENT OR ACCEPTANCE AS A PARTNER AFTER THE EFFECTIVE DATE OF THIS AGREEMENT OF A FORMER HOWREY PARTNER (OTHER THAN KLAPOW) WHO DISASSOCIATED FROM HOWREY AFTER MARCH 1, 2010.

7. In connection with the releases set forth in paragraphs 4, 5 and 6 above, the Parties waive all rights they may have under section 1542 of the California Civil Code, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

By executing this Agreement, the Parties expressly and forever waive the benefits, protection and rights of California Civil Code section 1542, or any other similar provision of the law of any other jurisdiction, with respect to matters released by the Agreement.

8. The signatory for C&M hereby represents that he or she has full power and authority to settle, limit, or otherwise control the matters and claims which are the subject of this Agreement and has authority to execute this Agreement on behalf of C&M.

9. The Trustee represents and warrants that he has the full power and authority to negotiate a final settlement of the matters and claims covered by this Agreement, subject to Bankruptcy Court approval described herein.

10. The Parties acknowledge that the Trustee is acting solely in his capacity as the Chapter 11 Trustee of Howrey in this matter and has no personal liability whatsoever with respect to this Agreement or the transactions described herein.

11. This agreement shall be binding on any and all replacements, successors, or assigns of the Trustee, including without limitation a chapter 7 trustee if the Bankruptcy Case is converted to one under chapter 7. Except as otherwise specifically provided for herein, nothing contained in this Agreement shall create any rights, remedies, or defenses in favor of any party of interest that is not a party to this Agreement.

12. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of California and the United States Bankruptcy Code and Federal Rules of Bankruptcy Procedure, as applicable. Each Party hereby submits to the jurisdiction of the Bankruptcy Court for any action, suit, or proceeding to enforce this Agreement which involves Howrey or the Trustee and agree that any such action, suit, or proceeding shall be brought in the Bankruptcy Court. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to venue of any such action, suit, or proceeding brought in such a court related solely to the Agreement and involving Howrey or the Trustee. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement as it relates to the Bankruptcy Case.

13. Neither this Agreement, nor any of the terms hereof, nor any negotiations or proceedings in connection herewith shall constitute or be construed as or be deemed to be evidence of an admission on the part of any party of any liability or wrongdoing whatsoever, or the truth or untruth, or merit or lack of merit, of any claim or defense of any party; nor shall this Agreement, or any of the terms hereof, or any negotiations or proceedings in connection herewith, or any performance or forbearance hereunder, be offered or received in evidence or

used in any proceeding against any Party, or used in any proceeding, or otherwise, for any purpose whatsoever except with respect to the effectuation and enforcement of this Agreement.

14. This Agreement may be signed in counterparts, which, when taken as a whole, shall constitute one and the same document; and faxed, electronic, and emailed signatures shall be deemed originals.

15. This Agreement shall be effective (the "Effective Date") fourteen (14) days after C&M receives written notice from Howrey that the Bankruptcy Court has entered an order approving this Agreement under Bankruptcy Rule 9019.

AGREED:

Dated: February 6, 2014

Howrey LLP, Debtor

By: 

Allan B. Diamond, Chapter 11 Trustee

Dated: February 6, 2014

Crowell & Moring LLP

By: 

Mark D. Plevin, partner

EXHIBIT B

1 **DIAMOND MCCARTHY LLP**

2 Andrew B. Ryan, Esq. (*pro hac vice*)
3 James D. Sheppard, Esq. (*pro hac vice*)
4 1201 Elm Street, Suite 3400
5 Dallas, TX 75209
6 Telephone: 214-389-5300
7 Facsimile: 214-389-5399
8 aryan@diamondmccarthy.com
9 jsheppard@diamondmccarthy.com

10 *Counsel for Allan B. Diamond,*
11 *Chapter 11 Trustee for Howrey LLP*

12 **KORNFELD, NYBERG, BENDES & KUHNER, P.C.**

13 Eric A. Nyberg, Esq. (Bar No. 131105)
14 Chris D. Kuhner, Esq. (Bar No. 173291)
15 1970 Broadway, Suite 225
16 Oakland, CA 94612
17 Telephone: 510-763-1000
18 Facsimile: 510-273-8669
19 *Local Counsel for Allan B. Diamond,*
20 *Chapter 11 Trustee for Howrey LLP*

21 UNITED STATES BANKRUPTCY COURT

22 FOR THE NORTHERN DISTRICT OF CALIFORNIA

23 In re

24 HOWREY LLP,

25 Debtor.

Case No. 11-31376 DM

Chapter 11

**DECLARATION OF ALLAN B.
DIAMOND IN SUPPORT OF
CHAPTER 11 TRUSTEE'S MOTION
FOR ORDER APPROVING
SETTLEMENT AGREEMENT WITH
CROWELL & MORING LLP**

26 Allan B. Diamond makes this declaration under 28 U.S.C. § 1746, and states:

1. I am the chapter 11 trustee ("Trustee") for Howrey LLP ("Howrey" or "Debtor").

The Court approved my appointment on October 12, 2011. I make this declaration in support of

1 my *Motion for Entry of Order Approving Settlement Agreement With Crowell & Mooring LLP*
2 ("Motion").

3 2. Unless otherwise stated in this declaration, I have personal knowledge of the facts
4 set forth herein or have confirmed such facts through consultations with professionals employed
5 in this case or the Howrey estate.

6 3. Following my appointment in this case on October 12, 2011, I engaged in
7 extensive investigation and analysis of claims that could be asserted on behalf of Howrey's estate
8 against former Howrey partners and the successor law firms that hired the former Howrey
9 partners. As part of those efforts, I engaged in Rule 2004 discovery with a number of successor
10 law firms, including Crowell & Mooring LLP ("C&M"), to obtain documents or other relevant
11 information regarding the unfinished business of Howrey that might have been completed at the
12 successor law firms.
13

14 4. On December 5, 2013, C&M provided my counsel and me with confidential
15 information and a chart of four matters (the "Former Howrey Matters") that could possibly
16 constitute unfinished business transferred from Howrey to C&M by former Howrey Level I
17 partner Mark Klapow (the "C&M Former Howrey Partner").
18

19 5. Based upon my and my counsel's review and analysis of the C&M data produced,
20 I believed that the Howrey estate likely had meritorious claims against C&M for recovery of the
21 profits earned on the Former Howrey Matters, both on fraudulent conveyance grounds and the
22 unfinished business doctrine ("Unfinished Business Claims"). Among other things, I believed
23 Howrey's former partners improperly attempted to shield themselves and their successor firms
24 (including C&M) from unfinished business claims by executing a so-called Jewel Waiver on the
25 eve of Howrey's dissolution. I also believed that Howrey's partners approved this eleventh-hour
26

1 Jewel Waiver knowing that similar waivers had been avoided as fraudulent transfers in prior law
2 firm bankruptcies.

3 6. Between January 14, 2014 and January 16, 2014, C&M and my counsel engaged
4 in arm's length negotiations regarding the settlement of unfinished business claims that the
5 Trustee and/or Howrey has or may have against C&M.

6 7. On February 6, 2014, I authorized my counsel to accept settlement with C&M
7 which resulted in a compromise embodied in the C&M Settlement Agreement that generally
8 provides the Howrey estate with the following benefits:

- 9
- 10 a. Within three business days of the Effective Date, C&M shall pay the sum
11 of \$65,500 to the estate (the "Payment") via bank check or wire transfer.
12 See C&M Settlement Agreement ¶¶ 1-2.
 - 13 b. Upon the Effective Date of the C&M Settlement Agreement, the Trustee
14 will agree to release claims against C&M (and related parties) that the
15 Trustee has ever had, now has, or shall have against C&M. See C&M
16 Settlement Agreement ¶ 4.
 - 17 c. Upon the Effective Date of the C&M Settlement Agreement, C&M will
18 agree to release claims against Howrey and the Trustee (and their related
19 parties) that C&M has ever had, now has, or shall have against Howrey
20 and/or the Trustee. See C&M Settlement Agreement ¶ 5.

21 8. I believe that the compromise detailed in the C&M Settlement Agreement is in
22 the best interest of the Howrey estate and its creditors. All of these benefits were obtained
23 without litigation, but instead through good faith and arm's length negotiations with C&M and
24 its counsel.

25 9. My ultimate decision to approve the C&M Settlement Agreement is guided by the
26 factors set out in *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986),
cert. denied sub nom. Martin v. Robinson, 479 U.S. 854 (1986). The factors considered are "(a)

1 [t]he probability of success in the litigation; (b) the difficulties, if any, to be encountered in the
2 matter of collection; (c) the complexity of the litigation involved, and the expense,
3 inconvenience and delay necessarily attending it; [and] (d) the paramount interest of the creditors
4 and a proper deference to their reasonable views in the premises.” *Id.* (internal citations
5 omitted). Here, the factors weigh in favor of the C&M Settlement Agreement.
6

7 10. First, the C&M Settlement Agreement results in a compromise of the unfinished
8 business claims and Payment to the estate without commencing any litigation. The Payment is
9 approximately 17% of the gross revenue collected by C&M on the former Howrey matters and,
10 thus, well within the range of reasonableness based on the range of settlements obtained in prior
11 law firm bankruptcies.

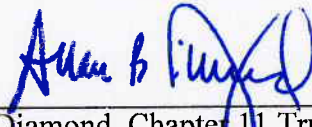
12 11. Second, C&M raised a legal defense about whether the firm had unfinished
13 business liability because the C&M Former Howrey Partner was a Level I partner at Howrey.
14 Although the Trustee believes that this issue would be resolved in the Trustee’s favor, the C&M
15 Settlement Agreement obviates the risk that the Trustee faces in litigating this issue.
16

17 12. Had litigation commenced over the unfinished business claims, I believe there
18 would have been little risk that the litigation would have been unsuccessful. However, given (i)
19 the amount of unfinished business revenue at issue compared to the attendant costs (and risks) of
20 litigation; and (ii) the range of potential offsets or credits to which C&M might be entitled as part
21 of the estate’s damages calculations, even a successful litigation would be unlikely to net the
22 estate a materially higher recovery than provided for in the proposed settlement.
23

24 13. For these reasons, I have concluded in my business judgment that the C&M
25 Settlement Agreement is fair, equitable and in the best interest of the estate and its creditors.
26

1 I declare under penalty of perjury under the laws of the United States of America that the
2 following is true and correct to the best of my knowledge and belief.
3

4 Dated: March 24th, 2014
5
6

7
8 By: 
9 Allan B. Diamond, Chapter 11 Trustee of the
10 Bankruptcy Estate of Howley LLP
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26